

**Report Concerning the Allegations of Retaliation Against**  
**Department of Environmental Protection Captains**  
**Henry M. Konow, Jr. and Timothy Skaats for Their Whistleblower Actions**

**I. Scope of the Investigation**

On May 29, 2001, Henry M. Konow, Jr. and Timothy Skaats, Captains in the Department of Environmental Protection's (DEP) Bureau of Outdoor Recreation, filed a complaint with the Auditors of Public Accounts under Connecticut's Whistleblower laws, Conn. Gen. Stat. §4-61dd et seq. Captains Skaats and Konow alleged that DEP was subjecting them to retaliatory action for having reported in January 2001 allegations relating to a 1995-1996 DEP investigation of a stolen jet ski at Candlewood Lake. Beginning on or before May 17, 2001, DEP commenced an Internal Affairs Investigation into the 1995-1996 investigation of the stolen jet ski. The State Police assigned an investigator to assist the DEP on June 1, 2001. The investigators issued their Internal Affairs Investigation report on November 1, 2001. DEP has not yet completed adjudication of this report. According to internal DEP procedures, such adjudication determines and concludes whether the findings, conclusions, and recommendations of the investigators are accepted, rejected or modified by DEP. On February 26, 2002, Deputy DEP Commissioner David K. Leff notified Captain Konow that he was being dismissed from State service effective March 13, 2002.

Commendably, the Governor has ordered a halt to further disciplinary actions involving these individuals, and may now wish to extend these instructions based on this report. There is no evidence that the Governor had any role in the events set forth here or any knowledge of them when they occurred.

This Report examines only whether the actions taken by DEP against Captains Skaats and Konow were appropriate in view of their status as "Whistleblowers", taking into consideration their January 2001 report to their superiors and the course of action pursued by DEP after receipt of their report. It does not assess the allegations contained in the investigative report filed by Captains Skaats and Konow with the DEP in January 2001, except as they relate to the action taken by DEP against Skaats and Konow themselves. The 1995-1996 DEP investigation was grossly deficient and flawed, but it was a criminal investigation and the criminal law enforcement ramifications of its findings, as well as issues such as whether its deficiencies were the result of purposeful misconduct, or of inexperience or inattention, are matters properly addressed by criminal law enforcement authorities. This report discusses the conclusions reached by the DEP in its 2001 investigation, to the extent that those conclusions relate to the action taken by DEP against Captains Skaats and Konow. It also includes recommendations that may assist DEP in completing its adjudication of the 2001 Internal Affairs Investigation report.

The conclusions here are based on evidence and testimony gathered by the DEP and State Police investigators in the DEP Internal Affairs Investigation, DEP files and other documents independently obtained by this office, and formal testimony under oath and interviews.

## **II. Introduction**

The present controversy is rooted in events nine years ago, beginning with the 1993 theft of a jet ski at Candlewood Lake. The 1995 recovery of the jet ski by the owner from Michael Rell, the son of the Lieutenant Governor, led to an investigation headed by a local DEP Law Enforcement Division Sergeant, Thomas Brelsford. Sergeant Brelsford's investigation concluded a year later without any arrests. He continues to work at DEP as a Sergeant in the Law Enforcement Division.

The matter lay dormant for almost four years until the 2000 investigation of an unrelated incident at Candlewood Lake by DEP Captains Skaats and Konow. During that investigation, Sergeant Brelsford reportedly told Captains Skaats and Konow that he had probable cause to arrest a suspect during his 1995-1996 stolen jet ski investigation, but "it was not pursued because that would mean that the Lt. Governor's son would have to be implicated as well."

Captains Skaats and Konow appropriately and legitimately reported these statements to their superiors at DEP. Citing the obvious conflicts of interest within DEP, they requested an independent non-DEP investigation into Sergeant Brelsford's 1995-1996 stolen jet ski investigation.

Colonel George Barone, the DEP Director of Law Enforcement, ordered a DEP Internal Affairs Investigation into the allegations concerning the 1995-1996 stolen jet ski investigation. However, instead of an independent and objective inquiry, DEP began a year of harassment, discipline and investigation apparently directed against Captains Skaats and Konow, culminating in a notice of termination of Captain Konow issued February 26, 2002. Captain Skaats is currently on an extended medical leave. The efforts against Skaats and Konow were principally directed by Colonel Barone, who had conflicting roles relating to an investigation of Brelsford's 1995-1996 investigation. He served as immediate supervisor to Sergeant Brelsford and as Director of Law Enforcement in 1995 and 1996, and was also a material witness in the Internal Affairs Investigation on the issue of whether political considerations or influence interfered with the stolen jet ski investigation. In short, he had a substantial personal self interest in the outcome, as a supervisory official whose performance and leadership would be at stake, and as a witness whose credibility might be at issue.

This untenable conflict of interest was directly and continuously implicated in the year-long pattern of discipline, harassment and investigation against two long-standing DEP law enforcement officers -- apparent retaliation for their reporting serious charges of possible wrongdoing. Instead, the matter at a minimum should have been managed outside the law enforcement division of DEP once the conflicts of interest within that division became apparent. Indeed, since the allegations raised an issue of possible political influence in a DEP law enforcement investigation, they should have been referred to another law enforcement agency for a completely independent review, as Captains Skaats and Konow originally suggested. While the State Police did assist DEP in investigating the statements contained in Captains Skaats' and Konow's report, DEP remained in control of the investigation. Repeated requests for clarification of the roles and authority of DEP and the State Police by the Whistleblowers' attorney were

answered ambiguously, when answered at all. The investigation was conducted solely under the authority and jurisdiction of the DEP Law Enforcement Division General Orders, which generally authorize such DEP Internal Affairs Investigations. The findings, conclusions, and recommendations of the 2001 investigation will be accepted, rejected or modified solely and exclusively by DEP in its final adjudication.

During the 2001 DEP Internal Affairs Investigation, Skaats and Konow cooperated with the State Police and DEP, providing them with written explanations of their investigative reports and actions taken by them in their investigation and a detailed plan discussing eight areas relating to the 1995-1996 stolen jet ski investigation to be examined. Yet, by October 23, 2001, when their testimony was ordered by Colonel Barone, Captains Skaats and Konow had a reasonable basis to believe that they had been targeted for retaliation in DEP's 2001 Internal Affairs Investigation, and were not being asked to testify as "witnesses", as they had been informed. Captains Skaats and Konow also had a reasonable basis to believe that Colonel Barone's order for them to testify was a pretext for unlawful retaliatory action against them as whistleblowers -- retaliation for resurrecting the 1995 allegations concerning the Lt. Governor's son, rather than a legitimate effort to investigate the quality of the 1995 investigation conducted by DEP into the theft of the jet ski. Indeed, within 12 days of the date Skaats and Konow were ordered to testify, DEP placed Captains Skaats and Konow on administrative leave, commenced and completed an Internal Affairs Investigation of their failure to testify, adjudicated that their failure to testify constituted misconduct, issued a pre-disciplinary notice of meeting and held a pre-disciplinary meeting to "discuss charges" against Konow that "could result in disciplinary action, including dismissal from State service."

Very significantly, Colonel Barone personally made the determination that the appropriate discipline against Konow would be termination from State service, a decision supported by his superiors. On February 26, 2002 Captain Konow was notified that he was being dismissed from State service effective March 13, 2002, a directive now held in abeyance by order of Governor Rowland.

Our investigation of the claims made by Captains Skaats and Konow -- including that the DEP retaliated against them for reporting Sergeant's Brelsford's statements concerning the 1995-1996 stolen jet ski investigation -- has determined the following essential facts:

- Sergeant Brelsford's 1995-1996 investigation of the stolen jet ski at Candlewood Lake was flawed and grossly deficient -- as the 2001 DEP investigation itself concluded -- because he failed to follow investigative leads and to obtain readily accessible and relevant information.
- In January 2001, Captains Skaats and Konow reported to their Superior, Colonel Barone, that Sergeant Brelsford made a statement to them that he had probable cause to arrest a suspect in the stolen jet ski matter but did not because of the political implications such an arrest would have.

- Colonel Barone had a personal interest in the matters raised in Skaats' and Konow's January 2001 report concerning Sergeant Brelsford's 1995-1996 flawed stolen jet ski investigation, and his participation in a review of the 1995-1996 stolen jet ski investigation constituted a clear conflict of interest. He was Sergeant Brelsford's immediate supervisor for the first 6 months of his 1995-1996 flawed stolen jet ski investigation. Colonel Barone was also directed by Vito Santarsiero, a political appointee with no environmental or law enforcement experience, to intrude into the 1995-1996 jet ski investigation.
- Colonel Barone initiated a pattern of harassment, investigation and discipline against Captains Skaats and Konow after the filing of their January 2001 report critical of the 1995-1996 stolen jet ski investigation.
- Although Captains Skaats and Konow, asked for an independent investigation of the 1995-1996 jet ski investigation, DEP allowed Colonel Barone to initiate, staff and participate in the investigation of the matters raised in Skaats' and Konow's report. The assistance of the State Police in the DEP investigation did not absolve Colonel Barone of his conflict of interest.
- Colonel Barone personally made the determination to terminate Captains Skaats and Konow from State service.
- As whistleblowers, Captains Skaats and Konow cooperated with the DEP investigation. They provided the DEP and State Police investigators with written explanations of their investigative reports, actions taken by them in their investigation and a detailed plan discussing eight areas relating to the 1995-1996 stolen jet ski to be examined.

In light of the apparent retaliation against them, Captains Skaats and Konow, through a series of letters sent by their attorney, sought to clarify the purpose, targets and other aspects of the investigation. These repeated requests for information were not addressed or answered by the DEP. On advice of their counsel, Captain Skaats and Konow declined to appear in person for questioning.

Captain Skaats' and Konow's failure to testify in the DEP investigation must be viewed in context: the pattern of action taken against them by Colonel Barone after filing their January 2001 report, the deep conflicts of interest within the DEP Law Enforcement Division and within DEP itself, the ambiguous nature of the State Police assistance in the DEP Internal Affairs

Investigation, and DEP's failure to respond to any of the numerous requests made by their legal counsel for clarification or for an independent investigation.

In light of these specific circumstances, DEP's disciplinary action against Captains Skaats and Konow, including termination, was inappropriate. The facts in this case reasonably support their allegation that the motivation for the course of DEP's disciplinary action against them was to retaliate for their whistleblower actions. Continued disciplinary action against Captains Skaats and Konow would violate Conn. Gen. Stat. § 4-61dd(b) and Conn. Gen. Stat. §31-51m. Section 4-61dd(b) provides, in relevant part, that "No state officer or employee ... and no appointing authority shall take or threaten to take any personnel action against any state ... employee ... in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of this section." Section 31-51m provides "No employer shall discharge, discipline or otherwise penalize any employee because the employee . . . reports, verbally or in writing, a violation or a suspected violation of any state or federal law or regulation . . . to a public body or because an employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body."

On the basis of the evidence we have examined, this office makes the following recommendations:

1. No further disciplinary action should be taken against Captains Skaats and Konow and all disciplinary actions or proceedings against them should be dismissed.

2. The January 2001 report submitted by Captains Skaats and Konow, Sergeant Brelsford's 1995-1996 investigative file and DEP's 2001 Internal Affairs Investigation, after it has been adjudicated by the DEP, should be provided to the Chief State's Attorney for his independent review and assessment.

3. Generally, regarding Internal Affairs Investigations:

DEP Law Enforcement Division's General Orders regarding the conduct of Internal Affairs Investigations should be amended to prohibit the involvement of persons with conflicts of interest or the appearance of conflicts of interest in DEP Internal Affairs Investigations, and to require the referral to an outside agency for an independent, non-Law Enforcement Division investigation when conflicts of interest exist within the Law Enforcement Division.

The Law Enforcement Division's General Orders regarding the conduct of Internal Affairs Investigations should be formally amended to incorporate the internal DEP policies currently being used to conduct and adjudicate Internal Affairs Investigative reports, and to provide for procedures and standards to be followed by the adjudicator.

### **III. History of the Controversy**

On July 5, 2000, Captains Skaats and Konow were assigned to investigate the actions taken by Candlewood Lake Marine Patrol Officers during an incident involving a domestic dispute aboard a boat at Candlewood Lake. As part of their investigation, they questioned Sergeant Thomas Brelsford, the DEP supervisor at Candlewood Lake. During his interview, Sergeant Brelsford related details of a 1995 incident at Candlewood Lake involving a stolen jet ski and Michael Rell, the son of Lieutenant Governor Jodi Rell.

As reported by Captains Skaats and Konow to their supervisor at DEP, Sergeant Brelsford stated that he conducted an investigation into the theft of the jet ski and that probable cause existed to arrest a suspect but "it was not pursued because that would mean that the Lt. Governor's son would have to be implicated as well." Sergeant Brelsford's supervisor at the commencement of the 1995 investigation was George Barone, then Captain of DEP Law Enforcement Western Division. By the conclusion of Brelsford's investigation, George Barone had been appointed Colonel, and Director of Law Enforcement, the top position in DEP's Law Enforcement Division.

In January 2001, Captains Skaats and Konow filed their report on the 2000 Candlewood Lake incident with Colonel Barone, now DEP's Director of Law Enforcement, and included Sergeant Brelsford's allegations relating to the 1995 jet ski investigation. Sergeant Brelsford did not supply Skaats and Konow with a copy of his 1996 investigative report, although they asked for it, and Brelsford never told them that he still retained his investigative file on the matter.

Colonel Barone directed Skaats and Konow to remove Brelsford's allegations from their report. Skaats and Konow did as requested and submitted two separate reports to Barone, one concerning the 2000 incident at Candlewood Lake and the second report detailing Sergeant Brelsford's statements about the 1995 stolen jet ski investigation. During this period of time, Colonel Barone commenced his own personal investigation of Skaats' and Konow's charges regarding Brelsford's stolen jet ski investigation. Among other things, he obtained from Sergeant Brelsford his complete investigative file on the stolen jet ski, which Brelsford had never given to Captains Skaats or Konow. Colonel Barone also requested Brelsford to re-create his 1996 report because Brelsford's original report apparently no longer existed. Barone did not share any of the information he obtained from Brelsford or Brelsford's re-created "report" with Captains Skaats or Konow. On April 11, 2001, Barone removed Skaats and Konow from their Candlewood Lake investigation, and assigned the investigation to DEP Captain Eric Nelson. According to Colonel Barone, he removed Skaats and Konow for their failure to "focus" their investigation "on the issues assigned" and for their failure "to completely separate unrelated and uncorroborated allegations from subject matter germane to the assignment."

Skaats and Konow filed a grievance against Colonel Barone for removing them from the investigation, which they considered to be punitive. On May 3, 2001, Colonel Barone ordered DEP Captain Eric Nelson to review and analyze Skaats' and Konow's January 29, 2001 report to determine whether their report was "outside the scope of the incident they were charged to investigate." Captain Nelson concluded that Skaats' and Konow's investigative report "failed to stay within the scope of the investigation." On May 17, 2001, Colonel Barone directed DEP

Captain Nelson to begin an internal investigation into whether Skaats and Konow had released “privileged and protected” information in connection with their union grievance against Barone. Also, on May 17, 2001, Colonel Barone ordered DEP Captain Nelson to begin an internal affairs investigation of Brelsford’s 1995-1996 stolen jet ski investigation. Captains Skaats and Konow filed a Whistleblower complaint with the State Auditors of Public Accounts on May 29, 2001, citing their 2001 investigative report and allegations of retaliation against them. On May 31, 2001, Colonel Barone requested the assistance of the State Police in the DEP Internal Affairs Investigation of the 1995-1996 stolen jet ski investigation. State Police Captain Thomas Snyder was assigned to work with Captain Nelson on the DEP investigation on or about June 1, 2001.<sup>1</sup>

On June 7, 2001, Colonel Barone notified Skaats and Konow that “a full and impartial investigation is being conducted” into the 1995 jet ski incident. On July 30, 2001, Barone issued an Official Reprimand to Skaats and Konow charging that their January 29, 2001 report on the 1995 stolen jet ski matter was “outside the scope of the incident they were charged to investigate,” and that they had violated policies and procedures in conducting their investigation and making their report on the Candlewood Lake investigation.

DEP Captain Nelson commenced the investigation, assisted by State Police Captain Snyder, interviewing and taking statements of individuals, and reviewing documents. By memos dated June 24 and 25, 2001, Captains Skaats and Konow provided the investigators with written explanations of their investigation, the information they had gathered in their investigation and a detailed plan for investigating eight areas of inquiry relating to Sergeant Brelsford's 1995-1996 investigation. On October 5, 2001, Attorney Brian W. Prucker, Skaats' and Konow's lawyer, wrote to the State Police, and sent copies to DEP Commissioner Rocque, explaining his concern about the conflicts of interest of Colonel Barone and Captain Nelson. He asked for a clarification of the scope of the investigation and of whether the investigation was a State Police Investigation, a DEP internal affairs investigation or a joint State Police-DEP investigation. State Police Commanding Officer Colonel Timothy F. Barry replied on behalf of the State Police. Although his initial, October 17, 2001, response indicated that Captain Snyder would have a leading role, his definitive subsequent letter dated October 29, 2001, stated that Captain Snyder's “authority is at the specific request of Colonel Barone” and that “[a]ll orders” regarding Skaats and Konow “have been made by the Department of Environmental Protection superiors and not by State Police personnel.”

DEP officials bore the ultimate responsibility for clarifying and responding to the issues raised by these inquiries, but never did so. DEP has offered two explanations for failing to respond to Attorney Prucker's questions and concerns. First, DEP determined that it would be

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<sup>1</sup> Captain Nelson completed the Internal Affairs Investigation of the 2000 Candlewood Lake domestic incident begun by Captains Skaats and Konow and made his report to Colonel Barone, who adjudicated this report and imposed discipline. Colonel Barone testified that he orally rescinded his order to Nelson to conduct an Internal Affairs Investigation of Barone's charges that Skaats and Konow had released “privileged and protected” information in connection with their union grievance against Barone because Nelson advised him that Skaats and Konow would have acted within their legal rights even if they had disclosed such information to their union representative.

unlawful for the agency to respond to Attorney Prucker's communications because Skaats and Konow had not provided DEP with a written statement waiving their right to have the Union represent them. Second, DEP saw no need to acknowledge or respond to them, because Prucker's letters were copied to the DEP Commissioner but addressed directly to the State Police.

On October 22, 2001, Attorney Prucker informed Captain Snyder that his clients would not appear for interviews until his questions concerning the authority and impartiality of the investigation had been answered. The investigators communicated this information to Barone.

On October 23, 2001, Colonel Barone ordered Skaats and Konow to appear before the investigators on October 25, 2001 and October 26, 2001. He did so despite a statement from Attorney Prucker only a day earlier that his clients would not appear until his questions were answered regarding the authority and the impartiality of the investigation. On October 25, 2001, Attorney Prucker again stated -- in a letter to the State Police and copied to Commissioner Rocque -- that his clients "remain fully committed to complete cooperation with a fair and impartial investigation", but characterized the DEP investigation as "rife with conflicts and improprieties" and again requested answers to his questions contained in his October 5, 2001 letter.

When Skaats and Konow did not appear for their scheduled interviews, DEP placed them on administrative leave on October 25, 2001 and October 30, 2001, respectively. Colonel Barone also ordered an internal affairs investigation of Skaats' and Konow's failure to appear at their scheduled interviews. These investigations concluded that Captains Skaats' and Konow's violation of Colonel Barone's October 23, 2001 order was knowing and premeditated, and constituted insubordination for which discipline was appropriate. Deputy Commissioner Leff adjudicated the investigation against Captain Konow, and upheld its findings and conclusions of insubordination. Leff then returned the matter to Colonel Barone, who determined that Konow should be terminated. The finding of insubordination against Captain Skaats has not yet been adjudicated, but is expected to be once Skaats returns to active duty from medical leave.

On November 1, 2001, DEP's Internal Affairs Investigation of the 1995 stolen jet ski investigation concluded. Among the findings of the investigators was that "it cannot be determined as to what level this investigation was hampered by the refusal of two key witnesses [Skaats and Konow] to cooperate in the development of corroborating information." A pre-disciplinary meeting was held with Konow on November 5, 2001 "to discuss charges ... which, if true, could result in disciplinary action, including dismissal from State service for just cause." On January 3, Deputy Commissioner Leff informed the State Police and Colonel Barone that he was going to ask Skaats and Konow to be interviewed and asked them to document "this further request ... in an amendment or addendum to their report." He also suggested that the report should be "revised or supplemented to fully detail" DEP's requests for the testimony of Skaats and Konow and their responses to those requests. On January 4, 2002, Deputy Commissioner Leff wrote to Captains Skaats and Konow asking them to testify as witnesses in the Internal Affairs Investigation, to "help the Department arrive at a full and fair resolution of this matter." On behalf of Captains Konow and Skaats, Attorney Prucker wrote directly to Leff,



again raising written questions concerning the legitimacy and impartiality of the DEP investigation. DEP did not respond. Captains Nelson and Snyder filed a "Report Addendum" dated January 28, 2002, documenting Skaats' and Konow's failure to accept Deputy Commissioner Leff's invitation to testify, without discussing the written responses made by Captain Konow and Attorney Prucker to Deputy Commissioner Leff's invitation.

On February 26, 2002, Deputy Commissioner Leff notified Captain Konow that he was being terminated on March 13, 2002.

#### **IV. Conclusions**

##### **1. Sergeant Brelsford's 1995-1996 Investigation of the Stolen Jet Ski was Grossly Deficient**

A vigorous and thorough investigation clearly was merited after the disappearance and discovery of Robert Keaney's jet ski, with the focus on key potential suspects in 1995.

In April, 1993, Robert Keaney of New Milford, Connecticut reported to the New Milford Police Department that a personal water craft ("PWC"), commonly referred to as a "jet ski," had been stolen from his driveway. Two years later, on August 19, 1995, Mr. Keaney noticed a jet ski that resembled the one that had been stolen from him tied to a mooring at Candlewood Lake. Earlier that day, Keaney had recognized someone known to him as Chris Smith bringing the jet ski to Candlewood Lake. Keaney approached Smith and explained that he believed the jet ski was the one stolen from him. Upon examining the jet ski, Keaney was able to confirm that it was, in fact, the one stolen from his driveway in 1993. Keaney and Smith located Keaney's registration for the jet ski and the trailer stolen with the jet ski, still within a vinyl cover where Keaney had placed them prior to the theft. Chris Smith explained to Keaney that the jet ski was being used by Michael Rell.

Keaney asked Chris Smith to bring Rell to speak with him. Subsequently, Smith and Rell arrived at Keaney's house. Keaney informed Rell that the jet ski belonged to him and had been stolen from him. Rell told Keaney that the jet ski belonged to his neighbor Matthew Yurick, and that Rell had stored the jet ski in his basement for the past two and one-half to three years. Rell produced a Department of Motor Vehicle registration renewal for the jet ski, issued to Matthew Yurick. Both Rell and Yurick had signed the registration renewal form as "owner(s)." Rell further told Keaney that he had spent four to five hundred dollars maintaining the jet ski.

Rell agreed to turn over the jet ski to Keaney, but asked Keaney to reimburse him for the money he had spent on it and offered to buy the jet ski from Keaney because he had spent "considerable amounts" of money maintaining it. Keaney told Rell that he would have to think about it. Keaney never heard from Rell again. Keaney was never contacted by Matthew Yurick concerning the jet ski.

When Keaney recovered his stolen jet ski from Rell, he noted the erasure of the Hull Identification Number (HIN), which was embedded into the hull by the manufacturer, and Keaney's DMV registration numbers. All of these numbers had been sanded off the vessel. A hidden ignition locking security device installed by Keaney had also been disabled, so the jet ski could operate.

Keaney made a report to the Candlewood Lake Marine Patrol and to the New Milford Police Department detailing all of the circumstances relating to his recovery of his stolen jet ski. The Law Enforcement Division of the Department of Environmental Protection's Bureau of Outdoor Recreation, which supervised the Candlewood Lake Marine Patrol, conducted a criminal investigation into the theft and recovery of the jet ski. The investigation began in August, 1995, and concluded in August or September, 1996. The principal investigating officer was Sergeant Thomas Brelsford, whose immediate supervisor at the commencement of the investigation was Captain George Barone, named Director of DEP Law Enforcement in January 1996. The investigation identified three suspects, Rell and Yurick, and an individual identified by Yurick, hereinafter called "John Doe".<sup>2</sup>

Brelsford obtained a sworn, notarized statement from Matthew Yurick, which reads in its entirety, "[i]n the Spring of 1993 I had made an arrangement to trade a 1969 Ford Mustang for a late 1980s early 1990s Sea-Doo Bombardier from John Doe. In exchange for the title to the vehicle, I was given the ski, registration, and ownership papers that I had used to register the ski in my name that same year. In the summer of 1995 I learned the property received from John Doe to be stolen." Yurick's father provided Brelsford a similar explanation as to how Matthew Yurick received the stolen jet ski.

John Doe denied to Brelsford ever transferring a jet ski to Yurick for an automobile, or selling any jet ski to Yurick at any time. John Doe told Brelsford that he never owned a jet ski like the one registered by Yurick. Brelsford's notes reflect that John Doe stated that he "did not have any jet ski, or ever had a jet ski that he traded to Matt Yurick." Brelsford's notes also indicate that John Doe's mother told him that she remembered her son "talking about trading car for something." Further, that there "was a white mustang here. Father was upset. Believe it was a swap."

Brelsford stated that he "attempted to locate the white Ford Mustang [that Yurick claimed to have traded to John Doe for the stolen jet ski] without success." There is no indication in Sergeant Brelsford's investigative file what efforts, if any, he made to locate this vehicle.

Sergeant Brelsford's investigative file included copies of the stolen jet ski's Certificate of Origin issued by the manufacturer, Robert Keaney's DMV-issued registrations for the jet ski and trailer, and Matthew Yurick's DMV-issued registration renewal for the jet ski. The same HIN

<sup>2</sup> John Doe's name has not been made public, but is contained in Sergeant Brelsford's investigation file from the 1995-1996 stolen jet ski investigation, subpoenaed by this office from DEP. As "uncorroborated allegations" of criminal activity, those records containing his name were required to be destroyed one year and ninety days after their creation, pursuant to Conn. Gen. Stat. §1-216. The release of John Doe's name in this report would be contrary to the legislative purpose for enacting §1-216.

appeared on the Certificate of Origin and Keaney's DMV registration. A different HIN appeared on Yurick's DMV registration renewal. Although the HIN embedded into the hull had been sanded off by the time Keaney recovered his stolen jet ski from Rell, Sergeant Brelsford apparently failed to determine whether the HIN was still visible under the jet ski's fuel tank, where it had also been embedded by the jet ski manufacturer.

Sergeant Brelsford's investigation ended in August or September 1996. His report on that investigation apparently has disappeared. He created a new report at Colonel Barone's request in May, 2001. There, Brelsford concluded that he "had the stolen property but not the 'intent' or 'knowledge' necessary 'to satisfy the elements of the larceny statute.'" Brelsford also stated that "Rell and Yurick did not know that the PWC was stolen, and that they did not commit any crimes." Brelsford further determined that there was no probable cause to charge John Doe in connection with the jet ski larceny.

Sergeant Brelsford's investigation was grossly deficient and flawed: he failed to pursue clear leads and to obtain readily accessible and useful information. Among the obvious specific failings in his investigation were:

- A readily obtainable source of evidence indicating whether Yurick or John Doe made false statements to Brelsford concerning the circumstances of Yurick's obtaining the stolen jet ski were the original registration application documents filed by Yurick with the Department of Motor Vehicles. None of these documents was obtained by Brelsford during his investigation. A review of these documents submitted by Yurick to DMV -- obtained by this office from the DMV -- shows, in fact, that they included a number of misrepresentations.

Yurick filed three separate documents with DMV: a Bill of Sale, an Ownership Affidavit, and an Application for Vessel Registration and Certificate of Number or Decal. The seller to Yurick is identified in each of these documents as Frank Campbell of Charleston, West Virginia. In none of these documents is the seller or transferor to Yurick identified as John Doe. A signature purporting to be that of Frank Campbell appears on each document. One of the signatures clearly is not in the same handwriting as the others. Never having obtained the original registration documents, Brelsford never contacted Frank Campbell. Subsequently, Frank Campbell denied to investigators for the Attorney General's Office and DEP that he ever sold or transferred a jet ski to anyone in Connecticut, including Matthew Yurick, and he denied that the signatures on these three documents were his. The Application for Vessel Registration filed by Yurick on April 21, 1993, represented the date of purchase to be "3/12/93." Robert Keaney reported that the jet ski was stolen from his driveway on April 5, 1993. Thus,

Yurick apparently falsely or erroneously represented to DMV that he had purchased the jet ski from Frank Campbell 25 days before it was stolen from Robert Keaney's driveway.

The Application for Vessel Registration filed by Yurick includes a fictitious Hull Identification Number (HIN) for the jet ski. The HIN listed on Yurick's application is not the HIN that was assigned to the jet ski and embedded in the hull and under the fuel tank by the manufacturer. Further, the manufacturer did not assign HINs to jet skis manufactured in the model year listed on Yurick's Application similar to the numbers listed on Yurick's Application. The stolen jet ski was manufactured by Bombardier. Yurick's sworn statement to Brelsford identified the jet ski as a Bombardier model. However, Yurick's Application for Vessel Registration filed with DMV represented that the manufacturer of the jet ski was Yamaha. Neither Bombardier nor Yamaha assigned the HIN stated on Yurick's Application to jet skis they manufactured.

- Even without the DMV records, Sergeant Brelsford was aware of other evidence that warranted further investigation. Candlewood Lake Marine Patrol Officer Paul E. Smith stated in his report of the jet ski recovery that at the time Keaney recovered the stolen jet ski from Michael Rell, the original Registration Number issued by DMV to Robert Keaney had been "heavily sanded" and the HIN number "had been all but sanded off" of the jet ski's hull. A hidden ignition locking device installed by Keaney preventing the engine from starting without a special key, had been disabled. This information should have prompted Brelsford to determine whether the jet ski was in that condition when Yurick took possession from John Doe, as he said he did. Brelsford's investigative file and the DEP investigation indicate that he failed to pursue these issues.

- Brelsford apparently never attempted to trace the title and registration history of the 1969 White Ford Mustang that Yurick claimed to have traded for the jet ski. Brelsford had both the vehicle's registration number and vehicle identification number, which were provided to him by Yurick's father. Although these records are no longer maintained by DMV, they existed in 1995-96, and might have provided important evidence or leads to witnesses who could have confirmed whether John Doe had ever owned or transferred the vehicle that Yurick claimed to have traded for the jet ski.

- Sergeant Brelsford incorrectly concluded that any larceny offense in connection with the theft or retention of the jet ski was a

misdeemeanor with a one year statute of limitations. Yurick's Application for Vessel Registration represented that the purchase price of the jet ski was \$500. Brelsford never attempted to determine the value himself. The 2001 State Police and DEP investigators obtained an opinion from the jet ski's manufacturer that the average value of a jet ski of the same model, make and year as Keaney's would have been \$2,500 in 1995. A larceny offense involving property valued between \$1,000 and \$5,000 is a Class D felony, C.G.S. Sec. 53a-124, punishable by incarceration of not less than one and not more than five years, C.G.S. Sec. 53a-35a(7). The statute of limitations for a Class D felony is five years. C.G.S. Sec. 54-193(b).

- Sergeant Brelsford apparently failed to examine how Rell came to possess and control the jet ski or ascertain whether Rell's conduct was consistent with his claim that the jet ski belonged to Yurick and that he was merely borrowing it at the time Keaney recovered it from Rell. Brelsford did not attempt to determine whether the HIN and Registration numbers had been sanded off, and the ignition locking device disabled, before or after Rell began storing the stolen jet ski in his basement for the prior three years. Brelsford did not seek an explanation as to why Yurick was storing the jet ski at Rell's house rather than at his own home or why Rell had signed the jet ski's DMV registration renewal application as "owner" with Yurick. Brelsford did not ask Yurick to corroborate Rell's explanation that he was storing the jet ski for Yurick. He did not ask Rell what he knew about how Yurick had received the stolen jet ski. Brelsford did not seek to determine whether Rell's immediately surrendering of the stolen jet ski to Keaney instead of calling Matthew Yurick, Yurick's father or the local police for assistance was inconsistent with Rell's claim that he believed that the jet ski belonged to Yurick.

These and other areas of investigation were highly relevant as to whether any of the suspects identified by Sergeant Brelsford committed crimes relating to the theft and possession of the stolen jet ski, the DEP statutory offense of operating a vessel with a defaced or destroyed HIN, or the crime of making a false statement. Yet, none of these areas of investigation were pursued by Sergeant Brelsford. Despite this grossly deficient investigation, Sergeant Brelsford's work was praised by his supervisors at DEP. DEP Captain Francis Bresson, Sergeant Brelsford's immediate supervisor at the conclusion of the 1995-1996 investigation, stated that he congratulated Brelsford on his work and was "happy that he [Brelsford] followed through and put so much time and effort into it, especially with the sensitivity of, what I thought, people were involved."

Correctly and aptly, the November 1, 2001, report determined that Brelsford's investigation was "flawed," suggesting that the glaring and gross deficiencies in his investigation of the stolen jet ski were related to "Sergeant Brelsford's limited experience in dealing with extensive criminal investigations as a normal course of his assignment." The investigators recommended that a charge of "lack of efficiency and accuracy of the investigation" be brought against Sergeant Brelsford.

After commencing his adjudication of the November 1, 2001 report, DEP Deputy Commissioner Leff asked the Law Enforcement Division to determine whether Sergeant Brelsford lacked the appropriate training and experience to conduct the stolen jet ski investigation, as suggested by the State Police and DEP investigators. DEP's Training Officer reviewed Brelsford's training and experience record, and concluded that prior to 1995, Brelsford had been more than adequately and properly trained to conduct a criminal investigation of the theft and recovery of a jet ski.

**2. Captain's Skaats and Konow understandably perceived action against them as retaliation for their complaints about the flaws and deficiencies in Sergeant Brelsford's Report.**

After complaints by Skaats and Konow about the flaws and deficiencies in Sergeant Brelsford's investigative report, Colonel Barone began a course of investigation, discipline and harassment that the two whistleblowers understandably perceived to be retaliatory, especially as they continued to question the fairness and legitimacy of the subsequent 2001 DEP Internal Affairs Investigation. As Sergeant Brelsford's immediate supervisor during the first six months of his stolen jet ski investigation, and ultimate supervisor when this investigation was concluded, Colonel Barone could be held accountable for his deficient and flawed investigation. Indeed, DEP Deputy Commissioner Leff testified that when he conducts his adjudication of the 2001 DEP Internal Affairs Investigation, he will examine the supervision that Brelsford received in 1995-1996. Even as Skaats and Konow felt they became targets of the internal inquiry, their questions and their counsel's were never fully or directly addressed.

This pattern culminated in a letter dated February 26, 2002 from DEP Deputy Commissioner David Leff notifying Captain Konow that he was being terminated for "just cause" effective March 13, 2001. The "just cause" cited by DEP for the termination relates to charges of violating agency rules, engaging in activity detrimental to the best interests of DEP or of the State, and insubordination for Skaats' and Konow's failure to obey Colonel Barone's October 23, 2001 order that they testify in the DEP's 2001 Internal Affairs Investigation of Sergeant Brelsford's 1995-1996 stolen jet ski investigation. According to DEP, Skaats and Konow refused to obey a "direct order" from Colonel Barone to be interviewed by DEP Captain Nelson and State Police Captain Snyder and refused a January 4, 2002 offer by David Leff to "testify as a witness before the investigators." Under the hostile, adverse and biased circumstances in which Captain Skaats and Konow found themselves in October, 2001, they had a reasonable basis to believe that they had been targeted for retaliation in the Internal Affairs Investigation and that Colonel Barone's order for them to testify was a pretext for unlawful retaliatory action against them,

rather than to assist the DEP and the State Police in an investigation of DEP's 1995-1996 stolen jet ski investigation. The following facts support their belief:

- Captains Skaats and Konow reported to Colonel Barone serious and compelling statements made to them by Sergeant Brelsford that no arrests were made in a 1995 criminal matter because an arrest would implicate the son of the Lieutenant Governor. Sergeant Brelsford's 1995-1996 investigation of the stolen jet ski was so grossly deficient that it justified and validated the efforts by Captains Skaats and Konow to bring the matter to the attention of their supervisors at DEP.

- Vito Santarsiero, a political appointee with no experience or training in environmental or law enforcement work, and an assistant to then Commissioner Holbrook, directly intervened in the 1995-1996 stolen jet ski investigation. DEP personnel have testified that Mr. Santarsiero informed DEP employees that he was handling the issue, was going to take care of it and determine what was going to happen and where it went. Mr. Santarsiero testified to this office that he did not "remember this incident." The reported political intrusion into the stolen jet ski investigation by Vito Santarsiero justified and validated Captains Skaats and Konow's efforts to bring Brelsford's statements to the attention of their supervisors and justified and validated their request for an independent investigation rather than an internal DEP inquiry.

- Colonel Barone was Sergeant Brelsford's immediate supervisor during the first 6 months of Sergeant Brelsford's 1995-1996 jet ski investigation and was Director of Law Enforcement at the conclusion of Brelsford's investigation. Vito Santarsiero complained to Barone about the "delay" in completing the investigation. . According to Barone, after this conversation, Barone explained to Brelsford that "other principal parties" were interested in the consequences of the investigation and ordered Brelsford to "wrap this thing up." Barone explained that by "other principal parties" he meant "the other suspects, Michael Rell and the Lieutenant Governor because it was her son." As Sergeant Brelsford's supervisor, and a high ranking DEP official, Colonel Barone had a direct conflict of interest in the investigation of the allegations concerning Sergeant Brelsford's 1995-1996 jet ski investigation, which unavoidably involved the competence and integrity of his supervision of Sergeant Brelsford during the 1995-1996 jet ski investigation and the communications he made to Sergeant Brelsford at the direction of Vito Santarsiero. Colonel Barone's conflict of interest justified and validated Skaats' and

Konow's request for an independent non-DEP investigation of the matter. It was clearly an issue of appearance, even if Colonel Barone and others denied that a conflict existed or believed it could be surmounted in reality.

- Despite Colonel Barone's clear conflict of interest, he continued to control and supervise DEP's response to Captains Skaats' and Konow's January 2001 report on the 1995-1996 stolen jet ski investigation. Colonel Barone first conducted his own personal investigation and then ordered a DEP Internal Affairs Investigation. He named the assigned DEP investigator to conduct this investigation. He defined the investigators' assignments. He provided the evidence he had collected to the investigators. When the investigators completed their report, they addressed it to Colonel Barone and State Police Colonel Barry. Under current procedures, if Deputy Commissioner Leff accepts the investigators' recommendation that charges be brought against Brelsford in connection with the stolen jet ski investigation when he adjudicates the report, under DEP procedures Colonel Barone will determine what discipline to impose. Barone has explained that he disagrees with the investigators' recommendation that charges be brought against Brelsford.

- Barone investigated, harassed and disciplined Captains Skaats and Konow for reporting Sergeant Brelsford's statements and for suggesting an independent non-DEP investigation of Brelsford's investigation. Colonel Barone's actions against Skaats and Konow comprised a series of harassing measures, escalating in severity. Between January and October 23, 2001, when Skaats and Konow were ordered by Colonel Barone to testify, Barone took the following actions against them: ordered Skaats and Konow to remove Brelsford's statements from their January 2001 incident report; removed Skaats and Konow from their 2000 Candlewood Lake investigation (April 11, 2001), for their alleged failure to "focus" their 2000 investigation on the issues assigned; ordered Captain Nelson on May 3, 2001 to review and analyze the January 29, 2001 report by Skaats and Konow to determine whether their report was "outside the scope of the incident they were charged to investigate;" ordered Captain Nelson on May 17, 2001 to investigate whether "privileged and protected information" was released by Captains Skaats and Konow outside DEP's chain of command; and on July 30, 2001, issued a formal reprimand to Captain Skaats and Konow for expanding their 2000 Candlewood Lake investigation to include Brelsford's 1995-1996 stolen jet ski investigation, for including "uncorroborated allegations" in their



report and for failing to submit their report “in proper form or content” or in “a timely manner.”

- Captains Skaats and Konow reasonably believed that the DEP 2001 investigation into the 1995-1996 stolen jet ski investigation ordered by Colonel Barone was not independent or objective, but rather was biased against them and constituted another attempt by Colonel Barone to investigate, harass or discipline them. The investigation was initiated on or before May 17, 2001 by Colonel Barone, who had ultimate supervisory responsibility for the grossly deficient 1995-1996 investigation conducted by Sergeant Brelsford and who was utilized to advance Vito Santarsiero’s reported intrusion into the investigation. The inquiry ordered by Colonel Barone was a DEP Internal Affairs Investigation, and he directed Captain Nelson to lead the effort on DEP’s behalf. Captain Nelson had already provided Colonel Barone, at Barone’s direction, a May 3, 2001 review and analysis of Skaats’ and Konow’s January 29, 2001 report of Sergeant Brelsford’s statements. In his review and analysis, Captain Nelson concluded that Skaats’ and Konow’s investigative report failed to “stay within the scope of the investigation as assigned by written order to the investigators.” On May 17, 2001, the same day Colonel Barone ordered Captain Nelson to conduct the investigation of the 1995-1996 stolen jet ski matter, Colonel Barone issued a second order to Captain Nelson, that he investigate whether Skaats and Konow had released privileged and protected documents outside the DEP chain of command, in connection with the grievance Skaats and Konow had filed against him.

- Although State Police Captain Thomas Snyder participated in the 2001 DEP internal affairs investigation, it continued to be a DEP Internal Affairs Investigation. Captain Snyder’s direction was “to assist” the DEP in its Internal Affairs Investigation. As explained by State Police Commanding Officer Colonel Timothy F. Barry in an October 29, 2001 letter to Attorney Brian W. Prucker, Skaat’s and Konow’s lawyer, Captain Snyder’s authority “is at the specific request of Colonel Barone” and “[a]ll orders “directed to Skaats and Konow” have been made by the Department of Environmental Protection superiors and not by State Police personnel.” In their sworn testimony, Colonel Barone and Deputy Commissioner Leff confirmed that the investigation was conducted under Barone’s authority to order DEP Internal Affairs Investigations and that Leff will adjudicate the report submitted by the investigators. The State Police confirmed that they have not and will not adjudicate the report, or play any role in deciding whether and what discipline is

appropriate based on the report's findings, conclusions and recommendations. If Leff's adjudication determines that discipline of other DEP employees is appropriate, Colonel Barone will decide what discipline to impose, under current procedures.

- DEP never responded to repeated inquiries from Captain Skaats' and Konow's lawyer whether their testimony was being ordered by DEP for a DEP internal affairs investigation, or alternatively for an investigation being conducted by the State Police or a joint DEP-State Police investigation. DEP also never responded to Attorney Prucker's concerns about Colonel Barone's conflict of interest regarding the 1995-1996 jet ski investigation and Skaats' and Konow's report of Sergeant Brelsford's statements concerning that investigation. Furthermore, although DEP was aware that Captain Skaats and Konow were represented by counsel, all directions and orders given to Skaats and Konow to testify were given directly to them by Colonel Barone and Deputy Commissioner David Leff, without notifying their legal counsel. DEP never acknowledged receipt of Attorney Prucker's letters or informed Skaats, Konow or their attorney that Skaats and Konow must provide a written waiver of union representation before DEP would communicate with Prucker. DEP adopted the strategy of totally ignoring counsel who clearly stated that he had been retained to represent Skaats and Konow.

- Captains Skaats and Konow cooperated with the State Police and DEP investigators, providing them with written explanations of their investigative reports, explaining actions taken by them in their investigation and a detailed plan discussing eight areas relating to the 1995-1996 stolen jet ski investigation to be examined.

### **3. The Termination of Captain Konow and Threatened Termination of Captain Skaats is not Justified**

Based on the events that transpired through 2001, Captains Skaats and Konow had a reasonable basis to believe that they were targeted for retaliation in DEP's Internal Affairs Investigation, that they were not merely witnesses, as they were informed, and that Colonel Barone's order that they testify was a pretext to take unlawful retaliatory action against them for their whistleblower activity. They had cooperated with the DEP and State Police investigators in DEP's Internal Affairs Investigation and had offered to testify in an independent investigation. Under such circumstances, termination or other disciplinary action against them for their failure to testify, as ordered by Colonel Barone, was not appropriate. The facts in this case reasonably support their allegations that the motivation for the course of DEP's disciplinary action against them was to retaliate for their whistleblower actions. Continued disciplinary action against Captains Skaats and Konow would violate Conn. Gen. Stat. § 4-61dd(b) and Conn. Gen. Stat.

§31-51m. Section 4-61dd(b) provides, in relevant part, that "No state officer or employee ... and no appointing authority shall take or threaten to take any personnel action against any state ... employee ... in retaliation for such employee's disclosure of information to the Auditors of Public Accounts or the Attorney General under the provisions of this section." Section 31-51m provides "No employer shall discharge, discipline or otherwise penalize any employee because the employee . . . reports, verbally or in writing, a violation or a suspected violation of any state or federal law or regulation . . . to a public body or because an employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body."

### **Recommendations**

1. No further disciplinary action should be taken against Captains Skaats and Konow, and all disciplinary actions or proceedings against them should be dismissed.

2. The January 2001 report submitted by Captains Skaats and Konow, Sergeant Brelsford's 1995-1996 investigative file and DEP's 2001 Internal Affairs Investigation, after it has been adjudicated, should be provided to the Chief State's Attorney for his independent review and assessment.

3. Generally, regarding Internal Affairs Investigations:

DEP Law Enforcement Division's General Orders regarding the conduct of Internal Affairs Investigations should be amended to prohibit the involvement of persons with conflict of interests or the appearance of conflicts of interests in DEP Internal Affairs Investigations, and to require the referral to an outside agency for an independent, non-Law Enforcement Division investigation where the Law Enforcement Division has conflicts of interest. Recognition and avoidance of conflicts of interest, real and apparent, is essential to creating public confidence in the professionalism and integrity of DEP Internal Affairs Investigations.

The Law Enforcement Division's General Orders regarding the conduct of Internal Affairs Investigations should be amended to formally incorporate the DEP internal policies requiring the adjudication of Internal Affairs Investigative reports, and to provide for procedures and standards to be followed by the adjudicator. The adjudication process was added to DEP Internal Affairs Investigations within the past two years by Colonel Barone, but he has not created any written protocols, standards or guidelines governing the adjudication process. The lack of written guidelines invites arbitrary and punitive adjudications, with little or no accountability.